

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-2932  
(Summary Calendar)

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VICKY BROOMFIELD, As representative  
of the Estate of Spencer Webb, Jr.,  
Deceased and as Next Friend of  
William Cody Webb, a minor,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA-H-90-273)

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(March 28, 1994)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

In this Suits in Admiralty Act<sup>1</sup> case, Plaintiff-Appellant  
Vicky Broomfield, in her representative capacities, appeals the

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\*Local Rule 47.5 provides: "The publication of opinions that  
have no precedential value and merely decide particular cases on  
the basis of well-settled principles of law imposes needless  
expense on the public and burdens on the legal profession."  
Pursuant to that Rule, the Court has determined that this opinion  
should not be published.

<sup>1</sup> 46 U.S.C. App. § 741.

judgment in favor of Defendant-Appellee, United States of America, including the court's refusal to award a fee to the guardian ad litem it had appointed to represent the decedent's minor child. Finding no reversible error, we affirm.

I

FACTS AND PROCEEDINGS

The facts of this case are essentially undisputed. On or about November 7, 1988, Spencer Webb, Jr. drowned in the Gulf of Mexico, near the mouth of the Colorado River. A year and one-half earlier, the U. S. Coast Guard had lights installed on the east and west jetties, which extended into the Gulf from the mouth of the river. In September 1988, however, Hurricane Gilbert completely destroyed the structure, the "day board," and the light at the seaward end of the east jetty. The Coast Guard did not replace the light on the east jetty until February 1989, some three months after Webb's death. For some time prior to his death, Webb had passed through the jetties approximately twice a week on fishing trips with Nelson Charland or Vicky Broomfield, each of whom knew before the November 7th trip that the east jetty light was missing.

On October 21, 1988, approximately two weeks before Webb's death, the U. S. Army Corps of Engineers notified the Coast Guard that the jetty lights had been destroyed. Beginning that day and continuing through October 31st, the Coast Guard caused notices of the light's destruction to be broadcast several times daily on marine safety frequencies. The Coast Guard also published notices of the light's destruction in the weekly Notices to Mariners of

October 25, 1988, and November 1, 1988.

Late on the afternoon of November 6th, Webb and Charland, in a boat measuring between 25 and 29 feet in length, traveled through the jetties a distance of 32 miles into the Gulf of Mexico to an offshore oil platform, to which they tied up and started to fish. In the early morning hours of November 7th, Webb and Charland stopped fishing and started back to shore after increasingly high winds and waves caused their mooring to break free of the platform.

The fishermen arrived at the mouth of the Colorado River about eight o'clock in the morning, at which time the seas were running ten to fourteen feet. Webb knew that seas of only six or eight feet would cover the east jetty, that there was no marker on the seaward end of the jetty, and that he would need to navigate the channel between the jetties. While the boat was approaching the channel with the east jetty in sight and Webb was in the process of turning the boat to make a more direct entry into the channel a large wave caused the boat to roll. When that happened Webb fell overboard, disappeared, and drowned.

Following a bench trial on the merits, the district court issued oral findings of fact and conclusions of law, and requested the guardian ad litem, appointed by that court, to advise the court regarding her claims for fees. In thereafter denying the guardian ad litem's request for fees, the district court concluded that neither the Suits in Admiralty Act nor the Federal Tort Claims Act contain express authorization for taxing the United States with such fees (or list such fees as taxable costs or expenses), and

that each act provides for an award of fees or expenses only to the prevailing party.

## II

### ANALYSIS

#### A. Causation

Broomfield argues that Webb's reliance is not an essential element of causation because the United States created the hazard by its construction of the east jetty and that the district court should have applied a negligence analysis to the instant facts. We review judgments of a district court sitting without a jury in admiralty matters under the "clearly erroneous" standard. Transorient Navigators Co., S.A. v. The M/S SOUTHWIND, 714 F.2d 1358, 1364 (5th Cir. 1983). "A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed." Id. (internal quotation and citations omitted). Questions of negligence and proximate causes are also reviewed under this standard. Id.

In Indian Towing Co. v. United States, 350 U.S. 61, 69, 76 S.Ct. 122, 100 L.Ed. 48 (1955), the Supreme Court established the limits of the Coast Guard's duty respecting placement and maintenance of navigational aids:

The Coast Guard need not undertake the lighthouse service. But once it exercised its discretion to operate a light . . . and engendered reliance on the guidance afforded by the light, it was obligated to use due care to make certain that the light was kept in good working order; and, if the light did become extinguished, then the Coast Guard was

further obligated to use due care to discover this fact and to repair the light or give warning that it was not functioning.

Applying the Indian Towing analysis, we have required a plaintiff to show not only that the navigational aid was improperly placed, but also that the position of the aid "reasonably affect[ed] the intended navigation. This causal connection is explained as a requirement of reliance." Inter-Cities Navigation Corp. v. United States, 608 F.2d 1079, 1082 (5th Cir. 1979). In Inter-Cities, because no credible evidence was presented to show that the mariner knew the correct charted position of the buoy and because he admitted that he had made the turn by reference to the off-station position of the buoy, we concluded that the dislocation of the buoy was not a cause in fact of the collision and that the government was not liable. Evidence of reliance is necessary to establish that the Coast Guard's negligence was a cause of the injury. See Sheridan Transp. Co. v. United States, 834 F.2d 467, 474-78 (5th Cir. 1987) (once Coast Guard undertook to mark wrecks, it had duty to notify mariners when it moved buoy substantial distance from wrecks; as it failed to do so and tug captain and river pilot relied to their detriment on misplaced buoy in making their approach, determination that Coast Guard's negligence proximately caused collision was appropriate, and case was remanded for assessment of comparative fault). See also De Bardeleben Marine Corp. v. United States, 451 F.2d 140, 149 (5th Cir. 1971) (in context of chart error corrected by publication, government's obligation ceases when it is reasonable to presume that prudent

shipowner-navigator would have received Notice to Mariners advising of publication of revised chart correctly portraying condition in question). Only if the court determines that the Coast Guard's negligence is a proximate cause of the accident must it apportion damages based on its assessment of comparative fault between the parties. Tringali Bros. v. United States, 630 F.2d 1089, 1090 (5th Cir. 1980).

As the district court determined<sup>SO</sup>and the plaintiff does not dispute<sup>SO</sup>that (1) Webb knew that the east jetty light had been destroyed, (2) the Coast Guard published notice of such destruction thereby satisfying its duty of due care, (3) Webb had negotiated the unmarked jetty on an ongoing basis prior to the accident, and (4) Webb had actually sighted the unmarked east jetty prior to being washed out of the boat, the district court's determinations that Broomfield failed to establish causation and that the Coast Guard was not negligent (pretermittting a comparative-fault analysis) were not clearly erroneous. Accordingly, as causation and negligence were not established, no comparative-fault analysis was necessary.

B. Fees of the Guardian Ad Litem

Broomfield contends that the district court abused its discretion in failing to award a fee to the guardian ad litem because such fees are taxable as costs, and the determination of the party to be taxed was within the court's discretion. We review a district court's award of costs for abuse of discretion. United States v. Mitchell, 580 F.2d 789, 793 (5th Cir. 1978).

Fed. R. Civ. P. 17(c) provides that a court shall appoint a guardian ad litem for an infant or an incompetent person not otherwise represented in an action. The guardian ad litem functions as an officer of the court; as such, his expenses are properly taxable as costs pursuant to Fed. R. Civ. P. 54(d). duPont v. Southern Nat'l Bank of Houston, Tex., 771 F.2d 874, 882 (5th Cir. 1985), cert. denied, 475 U.S. 1085 (1986). Rule 54(d) provides that "[e]xcept when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs." That general rule is subject to the caveat that "costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law." Id. This suit was commenced pursuant to the Suit in Admiralty Act, 46 U.S.C. app. §§ 741 et seq. and the admiralty jurisdiction of the district court, 28 U.S.C. § 1333. 46 U.S.C. app. § 743 provides that "the rules of practice obtaining in like cases between private parties" are applicable, and that a decree against the United States may include costs of suit. The provision is silent respecting taxation of costs when the United States prevails; accordingly, the requirement of express authority under Rule 54(d) has not been met, and the district court did not abuse its discretion in refusing to impose such costs against the United States as prevailing party.

AFFIRMED.